

MAY 30 2003

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

2003 MAY 30 P 4: 52

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5293

DATE COMPLAINT FILED: August 21, 2002

DATE OF NOTIFICATION: August 28, 2002

DATE ACTIVATED: January 6, 2003

EXPIRATION OF SOL: July 1, 2007

COMPLAINANT: Rebecca Vigil-Giron, Secretary of State, State of New Mexico

RESPONDENTS: John Dendahl, Chairman, Republican Party of New Mexico
Republican Party of New Mexico and Laurie Fowler, as treasurer
The Green Party of New Mexico and its treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(B)
2 U.S.C. § 441a(f)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 441f
2 U.S.C. § 437g(a)(12)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Complainant, Rebecca Virgil-Giron, Secretary of State for New Mexico, alleges that John Dendahl, Chairman of the Republican Party of New Mexico offered at least \$250,000 to the Green Party of New Mexico (the "state Green Party") in exchange for running federal candidates in New Mexico's 1st and 2nd Congressional Districts in the November 2002 general election. The complainant requested a "formal investigation" to determine whether Dendahl violated federal election laws. Respondents John Dendahl ("Dendahl") and the Republican Party of New Mexico

23-04-406-1381

(the "RPNM") submitted separate responses each requesting dismissal of the complaint.¹ This Report recommends that the Commission find no reason to believe that the respondents violated the Federal Election Campaign Act of 1971 ("the Act"), as amended, or Commission regulations, and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

According to news articles attached to the complaint, Dendahl acknowledged that he approached state Green Party leaders with a cash offer from an undisclosed entity to field candidates in New Mexico's 1st and 2nd Congressional Districts. *See* Loie Fecteau, *Dendahl Carries Cash Offer to Greens*, ALBUQUERQUE JOURNAL, July 12, 2002. Dendahl claimed that he was acting only as a "messenger" for a Washington, D.C. source when he approached state Green Party leaders "several times" with a cash offer to run congressional candidates. *See* Steve Terrell, *Offer backfires for GOP chief*, THE SANTA FE NEW MEXICAN, July 12, 2002. Among the state Green Party leaders reportedly approached by Dendahl with this offer were state Green Party co-chair Xubi Wilson, gubernatorial candidate David Bacon, Santa Fe legislative candidate Rick Lass, and activist Steve Cabiedes. *See id.* Dendahl reportedly stated, "they all expressed some interest." *See id.*²

The offer became public on July 6, 2002 at the state Green Party's Nominating Convention, when the state Green Party's co-chair Lisa Houston publicly declined the offer and passed a resolution that the party would never accept money from other political parties. *See* Green Party of New Mexico, *Green Party Not For Sale*, July 6, 2002; *see also* Thomas B. Edsall,

¹ A valid address for The Green Party of New Mexico and its treasurer (identity unknown) could not be found, despite a number of attempts. The RPNM's treasurer did not submit a separate response to the complaint.

² The date Dendahl's offer was conveyed to state Green Party leaders was not revealed in the complaint or accompanying news articles.

23-04-406-1382

1 *GOP Figure Behind Greens Offer, N.M. Official Says*, WASHINGTON POST, July 12, 2002.
2 Houston was quoted as saying: "The Green Party will not be used as a support group for the
3 Democratic Party nor [sic] as a battering ram for the Republican Party. We disavow and
4 condemn any attempts to manipulate or use the New Mexico voters as pawns in the game of
5 politics as usual." See Green Party of New Mexico, *Green Party Not For Sale*, July 6, 2002.

6 State Green Party co-chair Xubi Wilson reportedly admitted that he was trying to work
7 out a deal with Dendahl for Republicans to help the state Green Party to gather necessary petition
8 signatures for a state Green Party candidate in the 2nd Congressional District, but that the
9 possible candidate fell through. See *id.* Wilson reportedly conceded that he showed "bad
10 judgment" and resigned as co-chairman, saying that his dealings had become a "distraction" in
11 the election. See *id.*³

12 None of the numerous news articles definitively identified the ultimate source of the
13 offered funds or the motive behind the offer. Dendahl himself declined to disclose the identity of
14 the potential benefactor that contacted him about relaying the offer to the state Green Party.
15 However, according to several news articles, Dendahl described the potential benefactor and the
16 motivation to extend the offer in various ways. For example, Dendahl said he was acting as a
17 messenger for a Washington-based interest group wanting to ensure Republican victories in the
18 1st and 2nd Congressional Districts. See Barry Massey, *Madrid asked to review Dendahl's offer*
19 *to Greens*, THE NEW MEXICAN, July 16, 2002; see also Steve Terrell, *Offer backfires for GOP*
20 *chief*, THE SANTA FE NEW MEXICAN, July 12, 2002. Another news article quoted Dendahl as
21 saying about the entity, "This is someone concerned about the balance of power in the 435-
22 member House. There's only a small handful of U.S. House seats in play this year and two of

³ Wilson reportedly was criticized for not immediately rejecting the offer and pursuing it on his own. See Steve Terrell, *Green's Wilson Quits Over Offer*, THE SANTA FE NEW MEXICAN, July 23, 2002.

23-04-406-1383

1 them are in New Mexico, especially our 2nd District is considered very much in play.” See Loie
2 Fecteau, *Leaders Stand By Dendahl*, ALBUQUERQUE JOURNAL, July 13, 2002. A third article
3 reported that Dendahl said the money was from “a group very eager to keep Republicans in
4 power in the House of Representatives and has no keen interest in New Mexico.” See Steve
5 Terrell, *Sanchez rebukes Dendahl over offer to Greens*, THE NEW MEXICAN, July 17, 2002; see
6 also Loie Fecteau, *GOP Gov. Hopeful Criticizes Dendahl*, ALBUQUERQUE JOURNAL, July 17,
7 2002 (quoting Dendahl as stating: “This is not anybody who cares a hoot about New Mexico
8 specifically. This is some interest group with an interest in keeping Republican control of the
9 U.S. House.”). Dendahl reportedly stated that he did not know the party affiliation or the
10 organizational interest of the entity who asked him to approach the state Green Party, but that
11 “[i]t’s not the Republican Party, and it’s not related to the Republican congressional committee.”
12 See Loie Fecteau, *Dendahl Carries Cash Offer to Greens*, ALBUQUERQUE JOURNAL, July 12,
13 2002.⁴

14 According to a statement released by the state Green Party, Dendahl’s offer was made
15 under the “questionable assumption that state Green Party candidates would erode support for
16 Democratic Party candidates.” See Green Party of New Mexico, *Green Party Not for Sale*, July
17 6, 2002. According to a news article attached to the complaint, state Green Party candidates
18 have “sometimes been called spoilers” in New Mexico elections, and “usually” hurt Democratic
19 candidates. See Loie Fecteau, *Dendahl Carries Cash Offer to Greens*, ALBUQUERQUE JOURNAL,
20 July 12, 2002. However, Dendahl was reported as saying that the money would have been for

⁴ A spokesman for the Republican National Committee (“RNC”) reportedly said the offer didn’t come from anyone at the RNC. In addition, the White House reportedly had no knowledge of the claim. See Thomas B. Edsall, *GOP Figure Behind Greens Offer, N.M. Official Says*, WASHINGTON POST, July 12, 2002. Republican leaders in New Mexico reportedly denied knowledge of Dendahl’s offer prior to its being disclosed by the news media. See *Republicans back away from offer to Greens*, SANTA FE EL NORTE, July 13, 2002.

4381-904-40-33

1 the purpose of party building, and that it wouldn't have mattered to the Republicans whether the
2 state Green Party ran candidates in the 1st and 2nd Congressional Districts. *See id.*

3 The reported amount of the cash offer was also variously described. State Green Party
4 leaders reportedly stated that the offer was more than \$250,000. *See Green Party of New*
5 *Mexico, Green Party Not for Sale*, July 6, 2002. Dendahl was reported as saying that it was a
6 six-figure sum, with a minimum of \$100,000. *See Loie Fecteau, Dendahl Carries Cash Offer to*
7 *Greens*, ALBUQUERQUE JOURNAL, July 12, 2002; *see also* Steve Terrell, *Offer Backfires for GOP*
8 *Chief*, THE SANTA FE NEW MEXICAN, July 12, 2002. None of the news articles reported how the
9 funds would be transferred if the offer were accepted, e.g., whether Dendahl would make the
10 donation in his name or whether the true source of the funds would transfer the funds in its own
11 name.

12 After the offer and its rejection by the state Green Party became public, New Mexican
13 Democrats called for Dendahl's resignation and put pressure on New Mexico's Republican
14 Senator Pete Domenici to "flush out the facts and tell us the source of the offer." *See Loie*
15 *Fecteau, Domenici Urged to Lean on Dendahl*, ALBUQUERQUE JOURNAL, July 18, 2002 (quoting
16 Gloria Tristani, Senator Domenici's 2002 Democratic challenger for the U.S. Senate); *see also*
17 *Editorial, Dendahl's Dirty Trick May Backfire on GOP*, ALBUQUERQUE JOURNAL, July 14, 2002.
18 According to a news article, Chris Gallegos, a spokesman for Senator Domenici said that
19 Dendahl's action was "a bad thing to do", but stopped short of calling for his resignation. *See*
20 *Loie Fecteau, Leaders Stand By Dendahl*, ALBUQUERQUE JOURNAL, July 13, 2002. Dendahl
21 reportedly stated that "he [did] not think he did anything improper in approaching the Greens."
22 *See Loie Fecteau, Dendahl Carries Cash Offer To Greens*, ALBUQUERQUE JOURNAL, July 12,
23 2002.

23-04-406-1385

1 The media reported that the Attorney General for New Mexico investigated this matter,
2 upon request of the complainant, and found that Dendahl had violated no state laws. *See Barry*
3 *Massey, AG: Dendahl Violated No Law*, ALBUQUERQUE JOURNAL, July 12, 2002; *see also* Steve
4 Terrell, *Greens' Wilson Quits Over Offer*, THE SANTA FE NEW MEXICAN, July 23, 2002 (The
5 Attorney General was quoted as saying, "While it seems apparent that Mr. Dendahl's actions
6 were an attempt to manipulate the election process, it does not appear that Mr. Dendahl's
7 conduct is subject to criminal or other sanctions by our state courts under the laws of New
8 Mexico.").

9 **B. Responses to the Complaint**

10 Dendahl submitted a sworn response to the complaint, requesting dismissal of the
11 complaint on grounds that it failed to cite a violation by him of any statutory or regulatory
12 provision. Dendahl did not address the specific allegations of the complaint. He was silent as to
13 whether he made the offer, on whose behalf, the terms and conditions of the offer, the motivation
14 behind the offer, and how the transfer would be affected if the offer were accepted. Instead,
15 Dendahl pointed out that the Attorney General for New Mexico, at the request of the
16 complainant, investigated the matter and she found no violation of state law.

17 Dendahl complained of a press report's discussion that the Federal Election Commission
18 might investigate this matter. Dendahl alleged that the news article was the result of the
19 complainant forwarding the Commission's notification package to the newspaper, and that this
20 was a violation of the Act's confidentiality provision at 2 U.S.C. § 437g(a)(12)(A). He set forth
21 in his response, which is notarized, that he verified with THE SANTA FE NEW MEXICAN reporters
22 that their information contained in a news article about the complaint filed with the Commission
23 was obtained from the complainant and/or employees of her office. *See FEC Might*

9881-904-40-22

1 *Look Into Dendahl Offer*, THE SANTA FE NEW MEXICAN, September 13, 2002.⁵

2 Dendahl further alleged that the complainant abused the powers of her office as Secretary
3 of State for New Mexico, and filed this complaint for political reasons noting that she is a
4 Democrat seeking reelection in 2002, and that he is the chairman of the RPNM.⁶

5 The RPNM, through counsel, responded that the complaint did not reference any "statute,
6 regulation or precedent that would support the claim of a violation of law."

⁵ The Act prohibits any person from making public any notification or investigation made under 2 U.S.C. § 437g without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. See 2 U.S.C. § 437g(a)(12)(A). A news article attached to Dendahl's response refers to information contained in the Commission's letter and enclosures to the complainant acknowledging receipt of the complaint. See *FEC Might Look Into Dendahl Offer*, THE SANTA FE NEW MEXICAN, September 13, 2002. This Office located another news article in which Dendahl demanded an apology from the complainant for making her complaint to this Office public. See Loie Fecteau, *Dendahl Demands Apology*, ALBUQUERQUE JOURNAL, September 24, 2002. In that article, a spokesman from the complainant's office was quoted as saying: "There is no breach of confidentiality. The letter simply says the FEC is still considering this complaint." *Id.* There are two Advisory Opinions on the subject of confidentiality prior to reason-to-believe findings. Both concluded that a complainant who communicates with the press regarding the complaint filed with the Commission does not violate the confidentiality provisions of the Act, provided such person did not "disclose any information relating to any notification of findings by the Commission or any action taken by the Commission in an investigation until the case is closed or the respondent waives the right to confidentiality. Disclosure of these phases of the enforcement process is prohibited by 2 U.S.C. § 437g(a)(12) and 11 C.F.R. § 111.21." See Advisory Opinion 1995-1, citing Advisory Opinion 1994-32 (emphasis added). MURs interpreting the confidentiality provisions have interpreted 2 U.S.C. § 437g(a)(A) and 11 C.F.R. § 111.21 as inapplicable to situations involving the complainant's conduct leading to the publication or discussion of information or allegations contained in a complaint. Whether the disclosure took place before or after the filing of the complaint was not seen as relevant. In these situations, the Commission found no reason to believe that the complainant had committed a violation of the Act or Commission regulations. See Advisory Opinion 1994-32, citing MURs 3573, 3170, 3169, 3168, 1244 and 298 (Commission found no reason to believe that confidentiality provisions were violated where complainants publicly discussed contents of complaint with the news media after it was filed with the FEC). Although the Commission can use its supervisory powers to investigate an alleged violation of the Act of which it becomes aware, in this instance, because there appears to be no violation of 2 U.S.C. § 437g(a)(12) or 11 C.F.R. § 111.21(a), this Office does not recommend any findings or an investigation into the alleged breach of confidentiality.

⁶ Dendahl referred to a news article attached to his response in which he is reported as saying the Secretary of State failed to investigate the Democratic Party's attempts to discourage the state Green Party from running a gubernatorial candidate in the 2002 November election. See S.U. Mahesh, *Dendahl Says Inquiry Politically Motivated*, ALBUQUERQUE JOURNAL, July 31, 2002; see also Editorial, *Virgil-Giron Shreds Impartiality of Office*, ALBUQUERQUE JOURNAL, November 8, 2000.

23-04-406-1387

C. Analysis

The Act prohibits any person from making contributions "to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$20,000.

2 U.S.C. § 441a(a)(1)(B).⁷ Political committees are prohibited from knowingly accepting contributions in excess of the limitations at Section 441a. *See* 2 U.S.C. § 441a(f). A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i) (emphasis added).

It appears that Dendahl verbally offered a sum of money to the state Green Party, but that no one actually made any tangible transfers pursuant to the offer. The only portion of the definition of "contribution" that might apply in this matter is "subscription" since it signals a future act. The term "subscription" as it is used in 2 U.S.C. § 431(8)(A)(i) is not defined in the Act or the Commission regulations. The dictionary defines "subscription" as "a monetary contribution toward some cause." *Random House Dictionary of the English Language, The Unabridged Edition* (1983). To "subscribe" has been defined as "to promise, as by signing an agreement, to give or pay (a sum of money) as a contribution, payment, share, etc.: *He subscribed \$6,000 for the new church.*" *See id.* It appears that Dendahl's verbal offer on behalf of someone else fell short of a promise to pay the state Green Party a sum of money. At most, it appears that Dendahl was relaying an offer contingent on certain terms and conditions to be

⁷ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

23-04-406-1388

1 accepted by the state Green Party.⁸ In other words, there was no "subscription" or commitment
2 to pay the sum of money to the state Green Party, but only an offer that was not accepted.
3 Without an acceptance, there was no contract, and no legally binding obligation on the part of the
4 offerer.⁹

5 Accordingly, Dendahl's rejected offer of a sum of money, on behalf of a third party, to
6 the state Green Party did not constitute a "contribution" as defined by 2 U.S.C. § 431(8)(A)(i),
7 and therefore there was no violation of 2 U.S.C. § 441a. The Act also makes it unlawful for any
8 person to make a contribution in the name of another, for any person to knowingly permit his or
9 her name to be used to make such a contribution, and for any person to knowingly accept a
10 contribution made by one person in the name of another. 2 U.S.C. § 441f. The regulations
11 prohibit any person from knowingly helping or assisting any person in making a contribution in
12 the name of another. 11 C.F.R. § 110.4(b)(1)(iii). Since there was no contribution made, it
13 follows that there also was no violation of the Act's prohibition against making contributions in
14 the name of another. The complaint did not cite any provision of the Act or regulations that
15 might have been violated, and other than 2 U.S.C. §§ 441a and 441f, there are no other obvious
16 possibilities.

17 Based on the above, this Office recommends that the Commission find no reason to
18 believe that John Dendahl, the Republican Party of New Mexico and Laurie Fowler, as treasurer,

⁸ "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." RESTATEMENT (SECOND) OF CONTRACTS: Offer Defined § 24 (1981). "A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made." RESTATEMENT (SECOND) OF CONTRACTS: Promise § 2 (1981).

⁹ "Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." RESTATEMENT (SECOND) OF CONTRACTS: Acceptance of Offer Defined § 50 (1981). "A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." RESTATEMENT (SECOND) OF CONTRACTS: Contract Defined § 1(1981).

23-04-406-1389

or the Green Party of New Mexico and its treasurer violated any provision of the Federal Election Campaign Act of 1971, as amended, or Commission regulations in connection with this matter, and close the file.¹⁰

III. RECOMMENDATIONS

1. Find no reason to believe that John Dendahl violated any provision of the Federal Election Campaign Act of 1971, as amended, or Commission regulations in connection with this matter.
2. Find no reason to believe that Republican Party of New Mexico and Laurie Fowler, as treasurer violated any provision of the Federal Election Campaign Act of 1971, as amended, or Commission regulations in connection with this matter.
3. Find no reason to believe that The Green Party of New Mexico and its treasurer violated any provision of the Federal Election Campaign Act of 1971, as amended, or Commission regulations in connection with this matter.
4. Approve the appropriate letters.
5. Close the file.

Lawrence H. Norton
General Counsel

5/30/03
Date

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

Christine C. Gallagher
Christine C. Gallagher
Attorney

¹⁰ This Office will attempt to notify the Green Party of New Mexico and its treasurer of the Commission's findings in this matter. However, we may not be successful in notifying these Respondents because a valid address for them could not be found. See *supra* note 1.

23-04-404-1390